

MEMORANDUM FOR: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Ronald K. Lorentzen
Director, Office of Policy

SUBJECT: Issues and Decision Memorandum for the Preliminary Results of
the Full Five-Year Sunset Review of the Suspended Antidumping
Duty Investigation on Ammonium Nitrate from the Russian
Federation

Summary

We have analyzed the substantive responses and rebuttals of the interested parties in the full sunset review of the suspended antidumping duty investigation on ammonium nitrate from the Russian Federation ("Russia"). We recommend that you approve the positions we have developed in the *Discussion of the Issues* section of this memorandum for these preliminary results of review. Below is the complete list of the issues in this full sunset review for which we received substantive responses from the domestic and respondent interested parties:

1. Likelihood of continuation or recurrence of dumping
 - A. Weighted-average dumping margin
 - B. Volume of Imports
 - C. Other factors
2. Magnitude of the margin likely to prevail
 - A. Margins from the investigation

History of the Suspension Agreement

On August 12, 1999, the Department initiated an antidumping duty investigation under section 732 of the Tariff Act of 1930, as amended (the "Act") on ammonium nitrate from Russia. See Initiation of Antidumping Duty Investigation: Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation, 64 FR 45236 (August 19, 1999). On January 7, 2000, the Department preliminarily determined that ammonium nitrate from Russia was being, or was likely to be, sold in the United States at less than fair value. See Notice of Preliminary

Determination of Sales at Less Than Fair Value: Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation, 65 FR 1139 (January 7, 2000).

The Department suspended the antidumping duty investigation on ammonium nitrate from Russia, effective May 19, 2000. The basis for this action was an agreement between the Department and the Ministry of Trade of the Russian Federation (“MOT”) accounting for substantially all imports of ammonium nitrate from Russia, wherein the MOT agreed to restrict exports of ammonium nitrate from all Russian producers/exporters to the United States and to ensure that such exports are sold at or above the agreed upon reference price. See Suspension of Antidumping Duty Investigation: Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation, 65 FR 37759 (June 16, 2000) (“Suspension Agreement”). Thereafter, pursuant to a request by the petitioner in this investigation, the Committee for Fair Ammonium Nitrate Trade (“COFANT”), the Department completed its investigation and published in the Federal Register its final determination of sales at less than fair value. See Notice of Final Determination of Sales at Less Than Fair Value: Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation, 65 FR 42669 (July 11, 2000) (“Final Determination”). In the Final Determination, the Department calculated a weighted-average dumping margin of 253.98 percent for Nevinnomyssky Azot, a respondent company in the investigation, and for the Russia-wide entity.

On September 26, 2003, the Department received a request from COFANT for a scope ruling on a product containing 33 percent nitrogen and 3 percent phosphorus marketed as “NP 33-3-0” or “stabilized ammonium nitrate,” which was produced by Kirovo-Chepetsky Khimichesky Kombinat (“Chepetsky”) and imported by ConAgra International Fertilizer Company (“ConAgra”). COFANT requested that the Department determine whether NP 33-3-0 is included within the scope of the Suspension Agreement. On November 12, 2003, the Department initiated a scope proceeding and issued a preliminary scope ruling concluding that the Russian NP 33-3-0 is within the scope of the Suspension Agreement.¹ The Department issued a final scope ruling on March 11, 2004, in which it determined that NP 33-3-0 fertilizer is within the scope of the Suspension Agreement. See Letter from Edward C. Yang to All Interested Parties and accompanying Memorandum from Edward C. Yang to Joseph A. Spetrini: “Final Scope Ruling - Agreement Suspending the Antidumping Investigation on Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation,” dated March 11, 2004 (“Final Scope Ruling Memo”).

The Suspension Agreement remains in effect for all manufacturers, producers, and exporters of ammonium nitrate from Russia.

¹ See Letter from Edward C. Yang to All Interested Parties (November 12, 2003) and accompanying Memorandum from Edward C. Yang to Joseph A. Spetrini; “Preliminary Scope Ruling: Agreement Suspending the Antidumping Investigation on Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation”, dated November 10, 2003.

Background

On April 1, 2005, the Department initiated a sunset review of the suspended antidumping duty investigation on ammonium nitrate from Russia, pursuant to section 751(c) of the Act. See Notice of Initiation of Five-Year (“Sunset”) Reviews, 70 FR 16800 (April 1, 2005). The Department received Notices of Intent to Participate on behalf of COFANT and Agrium US Inc (“Agrium”), domestic interested parties in this proceeding, within the applicable deadline specified in section 351.218(d)(1)(i) of the Department’s regulations. See Agrium’s April 14, 2005, and COFANT’s April 18, 2005, submissions to the Department. Domestic interested parties claimed interested-party status under section 771(9)(c) of the Act. *Id.* In addition, domestic interested parties asserted that they are not related to a foreign producer/exporter and are not importers, or related to importers, of the subject merchandise. *Id.*

The Department received complete substantive responses from the domestic interested parties within the 30-day deadline specified in section 351.218(d)(3)(i) of the Department’s regulations. See Agrium’s April 29, 2005, and COFANT’s May 2, 2005, substantive responses. Also, on May 2, 2005, the Department received a partial substantive response from respondent interested parties: MCC EuroChem; Novomoskovskiy Azot; Nevinomyssky Azot; JSC Minudobreniya; JSC Acron; and JSC Dorogobuzh (collectively “Russian respondents”). In their initial response, the Russian respondents requested a one-week extension to submit a complete substantive response. On May 4, 2005, COFANT submitted a letter to the Department objecting to the Russian respondents’ extension request. The Department granted the Russian respondents an extension and on May 9, 2005, the Department received a supplemental substantive response from the Russian respondents. COFANT and the Russian respondents filed rebuttal briefs to each other’s substantive responses on May 16, 2005. On May 24, 2005, the Department issued a questionnaire to the Russian respondents, requesting additional information. On June 1, 2005, the Russian respondents submitted this additional information.

In a sunset review, the Department normally will conclude that there is adequate response from respondent interested parties such that it is appropriate to conduct a full sunset review where respondent interested parties who filed complete substantive responses account for more than 50 percent, by volume, of total exports of subject merchandise to the United States. See Section 351.218(e)(1)(ii)(A) of the Department’s regulations. After examining the respondent interested parties’ total exports of the subject merchandise, the Department determined that the respondent interested parties, who filed complete substantive responses, accounted for the requisite amount of production. See Memorandum from the Sunset Team to Ronald Lorentzen, Acting Director, Office of Policy, “Adequacy Determination: Sunset Review of the Antidumping Duty Suspension Agreement on Ammonium Nitrate from the Russian Federation,” dated May 24, 2005. Because the respondent interested parties submitted an adequate response to the notice of initiation, the Department is conducting a full (240-day) sunset review in accordance with section 751(c)(5)(A) of the Act, and section 351.218(e)(1)(i) of the Department’s regulations. On May 24, 2005, the Department notified the International Trade Commission (“ITC”) that it received an adequate response to the notice of initiation from the respondent interested parties

and, therefore, is conducting a full (240-day) sunset review. The Department's preliminary results of this review were scheduled for July 20, 2005, and its final results of this review were scheduled for November 28, 2005. On July 19, 2005, the Department extended time limits for its preliminary and final results in the full sunset review of the suspended antidumping duty investigation on ammonium nitrate from Russia because it needed additional time for its analysis. See Ammonium Nitrate from the Russian Federation: Extension of Preliminary and Final Results of a Full Five-Year Sunset Review of Suspended Antidumping Investigation, 70 FR 43121 (July 26, 2005). As a result of this extension, the Department is issuing the preliminary results of this sunset review on or about October 18, 2005 and the final results of this sunset review by February 27, 2006.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department is conducting a full sunset review to determine whether revocation of the suspended antidumping duty investigation would likely lead to a continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider (1) the weighted-average dumping margins determined in the investigation and subsequent reviews and (2) the volume of imports of the subject merchandise for the period before and the period after the suspension of the antidumping duty investigation. In addition, section 752(c)(3) of the Act provides that the Department shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the suspension agreement were terminated. Below we address the comments of interested parties.

1. Likelihood of continuation or recurrence of dumping

Parties' Substantive Responses

The domestic interested parties assert that termination of the suspended antidumping duty investigation on ammonium nitrate from Russia would likely lead to a continuation or recurrence of dumping of Russian ammonium nitrate in the United States. Citing section 752(c)(1)(B) of the Act, the domestic interested parties explain that in determining the likelihood of continuation or recurrence of dumping, the Department considers: (1) the weighted-average dumping margins determined in the investigation and subsequent reviews; and (2) the volume of imports of the subject merchandise for the periods before and after the acceptance of the suspension agreement. Further, the domestic interested parties state that in carrying out its statutory mandate, the Department will normally determine that termination of a suspended antidumping investigation is likely to lead to continuation or recurrence of dumping if any one of the following criteria is met: (a) dumping continued at any level above *de minimis* after the suspension agreement; (b) imports of the subject merchandise ceased after the suspension agreement; or c) dumping was eliminated after the suspension agreement and import volumes for the subject merchandise declined significantly.

With respect to non-market economy ("NME") suspension agreements, the domestic

interested parties state that the Department has commented further on how it will evaluate the likelihood of continuation or recurrence of dumping. According to the domestic interested parties, to make a likelihood determination in sunset reviews of NME suspension agreements, the Department has compared volumes actually imported under the suspension agreement with both the quota limits in the suspension agreement and pre-petition import volumes. The domestic interested parties refer to Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation; Final Results of the Expedited Sunset Review of Antidumping Duty Suspended Investigation, 69 FR 54633, (September 9, 2004) (“Hot-Rolled Steel from Russia”), and Final Results of Five-Year Sunset Review of Suspended Antidumping Duty Investigation on Certain Cut-to-Length Carbon Steel Plate from Ukraine, 68 FR 24434, (May 7, 2003) (“CTL Plate from Ukraine”), both NME suspension agreements, as illustrative cases in which the Department determined that the drop in imports of subject merchandise after the investigation was suspended indicated a likelihood of recurrence or continuation of dumping. Additionally, the domestic interested parties cite the Department’s decision in Preliminary Results of Full Sunset Review: Silicomanganese From Ukraine, 65 FR 34440, (May 30, 2000), and accompanying Issues and Decision Memorandum (“Silicomanganese from Ukraine”), where the Department found that “since the restrictions imposed by the suspension agreement are in part responsible for the decline in imports volumes, ... should the agreement be terminated, silicomanganese import volumes will increase.”² The domestic interested parties assert that consistent with the analysis in past sunset reviews of NME suspension agreements, the Department should determine that because of the significant dumping of subject merchandise during the investigation and the drop of import volumes after the Suspension Agreement came into force, termination of the Suspension Agreement would likely lead to the continuation or recurrence of dumping.

The domestic interested parties allege that, under the Suspension Agreement, import volumes declined significantly and immediately from pre-investigation levels, falling from 237,272 metric tons (“MT”) in 1998 and 237,165 MT in 1999 (the year when petition was filed), to 261 MT in 2000 (the year in which the suspension of liquidation resulting from the Department’s affirmative preliminary determination and the Suspension Agreement went into effect). The domestic interested parties allege that this drop in import volumes in 2000 represents a 99.89 percent drop in annual imports from pre-petition volumes in 1998. According to the domestic interested parties, the import restrictions imposed by the Suspension Agreement explain the decline in imports of ammonium nitrate and if the Suspension Agreement were terminated, import volumes would increase. Additionally, the domestic interested parties state that the Suspension Agreement quotas have in large part been fully utilized, despite the Russian exporters’ claim that they had difficulty filling their quota in 2004. Regarding the Russian exporters’ claim to have been unable to fill the quota in 2004 because the reference price under the Suspension Agreement was too high to permit shipments, the domestic interested parties assert that this is an indication that, absent the discipline of the Suspension Agreement, higher volumes and lower prices would prevail.

² Neither domestic nor respondent interested parties commented on the Department’s preliminary results of Silicomanganese from Ukraine. The Department issued its final results on September 21, 2000. See Final Results of Full Sunset Review: Silicomanganese from Ukraine, 65 FR 58045, (September 27, 2000).

The domestic interested parties state that in making its likelihood determination, the Department has the authority to consider other factors such as “other price, cost, market, or economic factors,” if “good cause” is shown according to section 752(c)(2) of the Act. The domestic interested parties assert that there is no need to examine other factors in this review; however, should the Department decide otherwise, it should consider such factors as Russia’s excess ammonium nitrate capacity, restricted export markets for Russian ammonium nitrate, increasing restrictions on “stabilized” ammonium nitrate, and contraction of the U.S. market. See COFANT’s response at 13.

The Russian respondents assert that termination of the suspended investigation would not be likely to lead to continuation or recurrence of dumping. According to the Russian respondents, the “plain language of the statute” requires that the Department terminate a suspended investigation *unless* it determines that dumping would be likely to continue or recur. The Russian respondents contend that the law is clear that revocation is the rule and continuation is the exception, and that the record must demonstrate that dumping would be likely to continue or recur for the exception to apply. According to the Russian respondents, Article 11.3 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (1994) supports their position, and recent WTO decisions reinforce the notion that the Department must satisfy a rigorous standard to render an affirmative likelihood determination and continue a suspended investigation. The Russian respondents assert that the record shows that the Russian producers of ammonium nitrate can compete in the United States without dumping. To support their statement, the Russian respondents provide data showing that the volume of ammonium nitrate increased steadily each year after the Suspension Agreement came into force (except for 2003-2004, where there was a decline in total imports), thus filling the quotas established by the Suspension Agreement at or near maximum levels. The Russian respondents avouch that despite rising reference prices, which jumped by 23 percent from \$126.39 in 2001 to \$155.76 in 2004, the Russian producers were still exporting ammonium nitrate to the United States. The Russian respondents assert that the evidence is clear that the Russian producers have been able to sell in significant volumes at or above the reference prices and, therefore, dumping is not likely to recur if the Department terminates the Suspension Agreement. Finally, the Russian respondents assert that because the record evidence demonstrates that dumping is not likely to continue or recur, there is no need for the Department to examine other factors under the “good cause” provision.

Parties’ Rebuttal Comments:

The domestic interested parties disagree with the Russian respondents’ statement that because they “have been able to sell in significant quantities, at U.S. market prices,” under the Suspension Agreement, they were able to sell in the United States without dumping. The domestic interested parties stress that the basic premise of the Russian respondents’ argument that an NME suspension agreement eliminates dumping, is wrong. Citing sections 734(b) of the Tariff Act of 1930, as amended (“the Act”), the domestic interested parties claim that while a market-economy suspension agreement must completely eliminate dumping, *i.e.*, “sales at less

that fair value,” section 734(l) of the Act permits acceptance of suspension agreements that limit volume, where the Department determines that the agreement “will prevent the *suppression or undercutting of price* levels of domestic products by imports of the merchandise under investigation.” Therefore, the domestic interested parties conclude that the respondents’ sales made at the minimum price established by the Suspension Agreement to avoid undercutting and suppression of U.S. producer prices do not mean that the Respondent’s prices have been at or above fair value.

Additionally, the domestic interested parties claim that the Russian respondents did not provide evidence that dumping is not likely to continue or recur if the Suspension Agreement is terminated. The domestic interested parties disagree with the Russian respondents’ argument that because they have been able to fill virtually all of their increasing quota, dumping is not likely to continue or recur should the Suspension Agreement be terminated. The domestic interested parties assert that shipping at or near maximum levels allowed under the Suspension Agreement only shows that reference prices have been set at levels designed to ensure that respondents could ship under the Suspension Agreement without suppressing or undercutting U.S. producer prices. Citing section 771(34) of the Act, the domestic interested parties avouch that because reference prices under the Suspension Agreement have no relationship to “fair value,” shipping the increasing allowable volume at the reference prices cannot be considered an indication of elimination of margins. Therefore, the domestic interested parties assert that it is clear that dumping is likely to continue or recur if the Suspension Agreement is terminated.

Also, the domestic interested parties state that if at any time during the Suspension Agreement the Russian respondents wanted to demonstrate that they could sell at or above fair value, after Russia gained its market-economy status or otherwise, they could have requested an administrative review to calculate new margins. The domestic interested parties argue that the Russian respondents proved that they cannot compete without dumping by continuing shipping ammonium nitrate to the United States under the Suspension Agreement. The domestic interested parties note that because of the lack of evidence that the Russian respondents cannot export ammonium nitrate to the U.S. market without dumping, it is clear that dumping is likely to continue if the Suspension Agreement is terminated. Furthermore, the domestic interested parties state that the Russian respondents did not provide any information on the future effects of terminating the suspension agreement outlined in section 351.218(d)(ii)(F) of the Department’s regulations, which requires interested parties to provide a statement on the “likely effects of revocation.”

The Russian respondents disagree with COFANT’s statement that the Department “must find that import volumes for the subject merchandise declined significantly under the Suspension Agreement” because they believe that COFANT’s position “conveniently ignores” the fact that the Suspension Agreement set quota limits which were below pre-petition volumes. Citing the Department’s analysis in CTL Plate from Ukraine, where the Department evaluated whether volumes were significant relative to the quota levels established in the Suspension Agreement, the Russian respondents state that the Department found that import volumes never rose above

25 percent of quota limits. The Russian respondents contend that facts of this Suspension Agreement review are quite different because “over the full four year period, imports of subject merchandise accounted for approximately 93 percent of the maximum volume allowed.” The Russian respondents disagree with the domestic interested parties that dumping would continue or recur absent the Suspension Agreement. Additionally, the Russian respondents allege that imports of ammonium nitrate were not affected by increases in the reference price, therefore suggesting that the termination of the Suspension Agreement would not be likely to lead to the continuation or recurrence of dumping.

Department’s Position:

Consistent with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (“URAA”), specifically the Statement of Administrative Action (“SAA”), H.R. Doc. No. 103-316, vol. 1 (1994), the House Report, H. Rep. No. 103-826, pt. 1 (1994) (“House Report”), and the Senate Report, S. Rep. No. 103-412 (1994) (“Senate Report”), the Department’s determinations of likelihood will be made on an order-wide basis. Pursuant to 752(c)(1) of the Act, in making these determination, the Department considers the margins determined in the investigation and subsequent reviews, and the volume of imports of the subject merchandise for the period before and after the issuance of the suspension agreement. In addition, the Department normally will determine that revocation of an order or termination of a suspension agreement is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order or the suspension agreement, (b) imports of the subject merchandise ceased after the issuance of the order or the suspension agreement, or (c) dumping was eliminated after the issuance of the order or the suspension agreement and import volumes for the subject merchandise declined significantly.

With respect to dumping margins, the Department calculated weighted-average dumping margins in its original investigation of 253.98 percent for Nevinnomyssky Azot, and for the Russia-wide entity. No more recently calculated margins exist because no administrative reviews have been requested or conducted since the issuance of the Suspension Agreement. We agree with the petitioner’s assertion that, just because the Russian respondents have made sales at reference prices during the life of the agreement, it does not follow that their pricing has been at or above fair value, nor does it follow that their pricing would be at or above fair value in the absence of the Suspension Agreement. Indeed, the weighted-average dumping margins determined in the suspended investigation are the only evidence we have of the behavior of Russian manufacturers, producers, and exporters without the discipline of a suspension agreement in place.

With respect to import volumes, we examined statistics compiled from tariff and trade data from the Department, the U.S. Treasury, and the U.S. International Trade Commission, (collectively, “USITC Tariff and Trade DataWeb”), the U.S. Customs and Border Protection reports, and data submitted by the parties and found that total import volumes of ammonium

nitrate dropped significantly in the year of imposition of the Suspension Agreement and the following year. In 2000, imports of ammonium nitrate amounted to 261 MT, a sharp drop from the pre-agreement level of 237,165 MT in 1999, and rose to only 87,246 MT in 2001 (approximately 13,000 MT under the limit allowed by the agreement).³ The Department finds that the restrictions imposed by the Suspension Agreement are in part connected with the decline in import volumes, and it is therefore likely that, in the absence of the Suspension Agreement, ammonium nitrate import volumes would increase. In Silicomanganese from Ukraine, the Department determined that “the likely outcome of removal of the restrictions would be the increase in availability and supply of Ukrainian silicomanganese in the U.S. market. Moreover, the basic laws of supply and demand suggest that an increase in supply, all else being equal, would be accompanied by downward pressure on prices.” Thus, the Department finds that removal of the Suspension Agreement on ammonium nitrate from Russia will likely cause Russian producers to increase import levels of ammonium nitrate in the U.S. market and lower their prices. In fact, given that, after the first two years of the Suspension Agreement, the export quota has been largely filled, it is likely that Russian producers would increase their supply of ammonium nitrate in excess of current quota levels if the Suspension Agreement were removed, which would likely result in lower prices.⁴

Moreover, the Russian respondents demonstrated, in their numerous submissions to the Department, that they are experiencing difficulty shipping ammonium nitrate at current reference prices. See e.g., Letter from Vladimir Loginov to Joseph A. Spetrini dated August 9, 2004, and accompanying JSC “Eurochem” Letter. The Department finds that, since reference prices established by the Suspension Agreement are based on current U.S. market prices, absent the restriction of the Suspension Agreement, the Russian respondents would presumably lower their prices in order to facilitate sales in the U.S. market.⁵ We note that the Russian respondents have not elaborated on the future effects of termination of the Suspension Agreement.

In sum, the final determination in the investigation found significant dumping to exist, and there has been no subsequent finding, or indication, that Russian producers have ceased dumping in the U.S. market. Moreover, we find that the Suspension Agreement has restrained import volumes and, thus, restrained the pricing behavior of Russian producers over the life of

³ We note, however, that the decline in import volumes after the entry into force of the Suspension Agreement goes beyond the decline required by the volume restrictions established by that agreement. In 2000, the export limit set by the Suspension Agreement for the Initial Export Limit Period was 49,962 MT. See Article II.A(1) of the Suspension Agreement. In 2001, the export limit was 100,000 MT.

⁴ The Department also notes that ammonium nitrate from Russia is already subject to an antidumping duty tariff in the European Union, Australia, and Brazil. Therefore, one can surmise that the Russian producers will have an even greater incentive to ship ammonium nitrate to the U.S. market once barriers to trade in the United States are removed.

⁵ Another indication of the potential for shipping higher volumes at lower prices absent the Suspension Agreement is the Russian producers’ sale of NP 33-3-0 fertilizer to the United States discussed in the History of the Suspension Agreement section of this memorandum. We note that NP 33-3-0 was sold at prices lower than ammonium nitrate. See Final Scope Ruling Memo at 22.

the agreement. Consequently, we find that, absent the discipline of the Suspension Agreement, dumping would be likely to continue or recur. Therefore, we determine, preliminarily, that dumping would be likely to continue or recur if the Suspension Agreement were terminated.

2. Magnitude of the margin likely to prevail

Parties' Substantive Responses:

The domestic interested parties state that the URAA directs the Department to provide to the ITC “the magnitude of the margin of dumping that is likely to prevail if the...suspended investigation is terminated.” The domestic interested parties argue that the Department should provide the Russia-wide margin of 253.98 percent, calculated in the investigation, to the ITC in accordance with the section 752(c)(3) of the Act. The domestic interested parties contend that the Department cannot select a more recently calculated rate because an NME suspension agreement does not require a periodic calculation of normal value, as in the case of market-economy agreements. See COFANT’s response at 10. Additionally, the domestic interested parties argue that despite Russia’s graduation to a market-economy status in 2002, the Government of Russia did not seek termination of the Suspension Agreement, which would have resulted in the issuance of an antidumping duty order, and the opportunity to request administrative reviews to establish new antidumping margins in accordance with section 751(a)(1)(B) of the Act.

The Russian respondents assert that there is not likely to be any dumping without the Suspension Agreement, but in case the Department determines a margin likely to prevail, it must calculate a new margin, and not rely on the one previously calculated in the investigation that employed an NME methodology. See the Russian response at 9. The Russian respondents argue that section 351.218(e)(2) of the Department’s regulations states that, where “extraordinary circumstances” require, the Department should use or calculate margins other than those from prior determinations in the proceeding. The Russian respondents assert that this case presents such extraordinary circumstances because that having found Russia to be a market economy, the Department should recognize that a margin calculated using an NME methodology is not likely to prevail if the Department terminates the suspension of investigation. Also, the Russian respondents note that the Russian producers’ experience in the U.S. market shows that they can compete without dumping. However, the Russian respondents conclude that if the Department deems it necessary to determine that a margin is likely to prevail, it should request all appropriate information from the Russian respondents. See Id.

Parties' Rebuttal Comments:

The domestic interested parties disagree with the Russian respondents’ claim that the Department must calculate a new margin based on market-economy methodology due to “extraordinary circumstances”, i.e., that 1) because Russia has been graduated to a market economy, any margin now would be calculated using a new methodology from the one used in the original investigation, and 2) the Russian respondents’ experience in the U.S. market shows

that they can compete without dumping. Citing section 351.218(e)(2)(l)(i) of the Department's regulations, the domestic interested parties state that in a full sunset review, the Department relies on a dumping margin other than the one calculated in its prior determinations only under the "most extraordinary" circumstances. See COFANT's rebuttal at 8. The domestic interested parties assert that such extraordinary circumstances do not exist in this review.

Furthermore, domestic interested parties allege that the Department has previously found in the case on tapered roller bearings from Hungary that a transition to a market economy did not constitute "extraordinary circumstances" requiring the calculation of a new margin. See Final Results of Expedited Sunset Review: Tapered Roller Bearings From Hungary, 64 FR 60272 (November 4, 1999) and COFANT's rebuttal at 9 ("Tapered Roller Bearings from Hungary"). Also, in Tapered Roller Bearings from Hungary the Department found that graduation to a market economy does not itself invalidate margins previously calculated using the NME methodology. Additionally, citing Gray Portland Cement and Cement Clinker From Mexico; Preliminary Results of Full Sunset Review, 65 FR 10468 (February 28, 2000) ("Cement from Mexico") and accompanying Issues and Decision Memorandum, the domestic interested parties note that the mere fact that a different methodology would apply prospectively, does not in any way invalidate the margin previously calculated in the original investigation. The domestic interested parties also note that the Russian respondents failed to prove that, during the course of the Suspension Agreement, they competed in the U.S. market without dumping. Therefore, for all the above reasons, the domestic interested parties assert that the margin calculated in the investigation remains the best indication of the Russian respondents' "behavior" in the absence of the Suspension Agreement and that the Department must find that the margin from the investigation is the margin likely to prevail.

The Russian respondents did not provide a rebuttal.

Department's Position:

Normally the Department will provide to the ITC the company-specific margin from the investigation for each company. For companies not investigated specifically, or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation (or, in the case of an NME investigation, the countrywide rate). The Department's preference for selecting a margin from the investigation is based on the fact that it is the only calculated rate that reflects the behavior of manufacturers, producers, and exporters without the discipline of an order or suspension agreement in place. In the original investigation, the Department calculated weighted-average dumping margins of 253.98 percent for the respondent Nevinnomysky Azot and for the Russia-wide rate.

We note that the rates from the investigation were not affected by the graduation of Russia to market-economy status in 2002. In the case on solid urea from Russia, the Department determined that the graduation of Russia from non-market-economy to market-economy status did not invalidate earlier margins based on non-market-economy methodology. See Issues and Decision Memorandum for the Expedited Sunset Review of the Antidumping Duty Order on

Solid Urea from the Russian Federation: Final Results, 70 FR 24528 (May 10, 2005) (“Solid Urea from Russia”). According to Solid Urea from Russia, graduation to market-economy status means that the examination of sales made after the effective date of graduation in antidumping investigations or administrative reviews is to be conducted according to the normal methodology for market economies rather than the special methodology applied to non-market economies. As stated by the Department in its memorandum granting Russia market-economy status:

We have determined that the effective date for the consideration of Russia as a market economy is April 1, 2002. Therefore, Russian producers and exporters will be subject to the antidumping rules applicable to market economies with respect to the analysis of transactions occurring after April 1, 2002.

See Decision memorandum from Albert Hsu, et. al., to Faryar Shirzad, Assistant Secretary for Import Administration Regarding the Inquiry into the Status of the Russian Federation as a Non-Market Economy Country Under the U.S. Antidumping Law, June 6, 2002 (“Russian Market Economy Status Decision Memorandum”). The memorandum goes on to state:

There will necessarily be a period of time during which antidumping duty rates, based on the non-market economy calculation methodology, will remain in effect. For existing antidumping duty orders, the non-market economy-based rates will remain in effect until they are changed as a result of a review, pursuant to section 751 of the Act, of a sufficient period of time after April 1, 2002. For ongoing investigations, because the period of investigation pre-dates the effective date of this determination, the Department will continue to utilize non-market economy methodologies in those investigations. Again, any antidumping duty rates established pursuant to these investigations will remain in effect until they are changed as a result of a review, pursuant to section 751 of the Act, of a sufficient period of time after April 1, 2002.

Id. There have been no administrative reviews of the Suspension Agreement pursuant to section 751 of the Act since Russia gained market-economy status; therefore, consistent with the Department’s decision in the Russian Market Economy Status Decision Memorandum, the rates from the investigation continue to apply. Additionally, the Department finds, consistent with its decisions in Tapered Roller Bearings from Hungary and Cement from Mexico, that the fact that a different methodology would apply prospectively (as a result of Russia’s graduation to a market-economy status), does not make the margin calculated in the investigation obsolete.

Finally, consistent with Tapered Roller Bearings from Hungary, Russia’s graduation to market economy status does not constitute the “most extraordinary circumstances” specified in the SAA that warrant reliance upon on a dumping margin other than one calculated in prior determinations. In Tapered Roller Bearings from Hungary, the Department determined that “the margin calculated in the original investigation is probative of the behavior of Hungarian producers/exporters if the order were revoked as it is the only rate that reflects the behavior of these producers and exporters without the discipline of the order.” See Tapered Roller Bearings from Hungary at 60275. In the review of the Suspension Agreement, the rates from the original investigation are the only calculated rates that reflect the behavior of producers or exporters of ammonium nitrate from Russia without the discipline of the suspension agreement in place; thus, we find that they are the most appropriate rates to report to the ITC. Therefore, pursuant to section 752(c) of the Act, the Department will report to the ITC the company-specific and Russia-wide rates at levels indicated in the Preliminary Results of Review of this notice.

Preliminary Results of Review

We determine that termination of the suspended antidumping duty investigation on ammonium nitrate from Russia would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Exporter/manufacturer	Weighted-average margin (percent)
JSC Azot Nevinnomyssky	253.98
Russia-Wide	253.98

Recommendation:

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of review in the Federal Register.

Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

(Date)